



January 5, 2017

Re: Daniels, et al. v. City of N.Y., et al., No. 16 Civ. 190 (PKC) (JO)) (EDNY)

Dear Judge Orenstein:

I am Plaintiffs' counsel in the above-captioned case. Plaintiffs' motion to compel Defendants' production of CI discovery is under advisement. Docket No. 49.¹ At a related conference, the Court directed Defendants to produce the CI file for in camera review. Docket No. 54.

I learned moments ago that Defense Counsel submitted for in camera review only those parts of the CI file that he unilaterally deemed relevant.² I vigorously object. Just yesterday, Defendants let me know for the first time that the NYPD Lab determined that, for one of the two "positive" controlled buys, the CI gave Defendants a substance that did not test positive as a controlled substance under New York law. Defendants invoked this "positive" buy in their search-warrant application, and also told the magistrate that the material field tested positive.³

I respectfully request that the Court permit me to make a supplemental submission on or before Monday, January 9, 2017, to explain my objection in greater detail. For now, I wanted to quickly get my position posted on the docket because I was not certain what the Court's timing would be in reviewing the CI material and/or ruling on the related motion.

While I have the Court's attention, I am compelled to ask for its intervention with another problem, which is that Defendants have not produced the materials the Court directed them to on or before December 22, 2016. I consented to the same two-week extension that the Court granted Defendants relative to the CI file, which moved the deadline to January 4, 2017. Tomorrow I will begin deposing Defendants and much of the material remains outstanding.

Sincerely,

A handwritten signature in blue ink that reads 'Ryan Lozar'.
Ryan Lozar

¹ It appears on the docket as a motion for a related pre-motion conference.

² I learned this from a copy of the in camera submission's cover letter.

³ By way of quick summary, the motion at Docket No. 49 discusses a great deal of other evidence that Defendants knew or should have known that the CI's positive reports were not reliable, i.e., Defendants (1) switched to this particular CI after months of negative results with other CIs at Plaintiffs' home; (2) incentivized the CI to falsely report by paying roughly double for a positive report than a negative one, and a bonus when a search warrant was obtained in reliance upon a CI's positive reports; (3) claimed to have used PRBM with the CIs but this was not true; and more.